

ORIGINAL CIVIL COVER SHEET

RECEIVED

CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

I. (a) PLAINTIFFS

Nury Mandujano

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Dallas
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Home Depot U.S.A., Inc.

Home Depot International, Inc.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN CIVIL CONTEMPT CASES, USE THE LOCATION OF THE DEFENDANT

82040V-1499H

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Kimberly H. Crane
Hondos & Hondos Law Offices
1595 N. Central Expressway
Richardson, TX 75080
(972) 231-9924

ATTORNEYS (IF KNOWN)

Arthur K. Smith
Law Offices of Arthur K. Smith
507 Prestige Circle
Allen, TX 75002
(469) 519-2500

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

PTF DEF PTF DEF

Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 620 Copyrights	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 630 Patent	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 640 Trademark	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 160 Stockholders' Suits	<input checked="" type="checkbox"/> 360 Other Personal Injury	LABOR	<input type="checkbox"/> 470 Racketeered Influenced and Corrupt Organizations	
<input type="checkbox"/> 180 Other Contract		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 510 Selective Service	
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 550 Securities/Commodities/Exchange	
REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 575 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 591 Agricultural Acts	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 592 Economic Stabilization Act	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 791 Emp. Ret. Inc. Security Act	<input type="checkbox"/> 593 Environmental Matters	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	FEDERAL TAX SUITS	<input type="checkbox"/> 594 Energy Allocation Act	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 595 Freedom of Information Act	
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 871 IRS — Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or ReopenedTransferred from
5 another district
(specify) 6 Multidistrict LitigationAppeal to District Judge from
7 Magistrate Judgment

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 USC § 1332 personal injury - premises defect

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
□ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: YES NOVIII. RELATED CASE(S) (See instructions):
IF ANY

JUDGE

DOCKET NUMBER

DATE

7/8/04

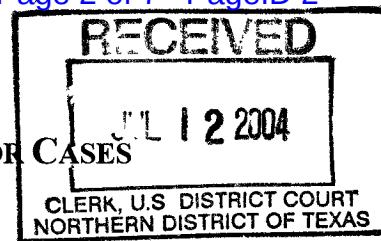
SIGNATURE OF ATTORNEY OF RECORD

John F. Smith

FOR OFFICE USE ONLY

United States District Court
Northern District of Texas

ORIGINAL

SUPPLEMENTAL CIVIL COVER SHEET FOR
REMOVED FROM STATE COURT

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerks Office. Additional sheets may be used as necessary.

1. State Court Information:

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

Court3504CV-1495HCase Number

County Court at Law No. 2 of
Dallas County, Texas

CC-04-6566-B

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

Party and Party TypeAttorney(s)

Nury Mandujano, Plaintiff

Kimberly H. Crane
Texas State Bar No. 24036415

Anjel K. Avant
Texas State Bar No. 01448470

KONDOS & KONDOS LAW OFFICES
1595 N. Central Expressway
Richardson, Texas 75080
Telephone: (972) 231-9924
Facsimile: (972) 231-8636

Home Depot U.S.A., Inc., Defendant

Arthur K. Smith
Texas State Bar No. 18534100

LAW OFFICES OF ARTHUR K. SMITH
507 Prestige Circle
Allen, Texas 75002
Telephone: (469) 519-2500
Facsimile: (469) 519-2555

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Claim(s)</u>
Plaintiff	Personal injury claims under Premises defect theory
Defendants	Deny all claims

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NURY MANDUJANO,

Plaintiff,

vs.

HOME DEPOT U.S.A., INC., and
HOME DEPOT INTERNATIONAL, INC.

Defendant.

V
X

NORTHERN DISTRICT OF TEXAS
FILED
JUL 12 2004
CLERK, U.S. DISTRICT COURT
Deputy

8-04 CV-1499 H

CIVIL ACTION NO. _____

JURY DEMANDED

DEFENDANT HOME DEPOT U.S.A., INC'S NOTICE OF REMOVAL

Defendant Home Depot U.S.A., Inc. ("Home Depot"), for the purpose of removing this case to the United States District Court for the Northern District of Texas, Dallas Division, states:

1. **State Court Action.** This is an action filed on or about June 8, 2004, in the County Court at Law No. 2 of Dallas County, Texas, being numbered CC-04-6566-B on the docket of said Court and being a suit by Plaintiff, Nury Mandujano ("Plaintiff") against Home Depot and Home Depot International, Inc. ("HDI") to recover for personal injuries based on a premises defect. Specifically, Plaintiff seeks damages for injuries allegedly sustained when she slipped and fell on a liquid substance on the floor of The Home Depot store located at 3261 North George Bush Freeway, Garland, Texas (the "Store").

2. **Diversity Jurisdiction.** Home Depot is incorporated only in Delaware, with its principal office and place of business located in Atlanta, Georgia, both at the time of the filing of the action and at the time of the removal. Home Depot, therefore, is a citizen of the States of Delaware and Georgia. Plaintiff is a citizen of Texas. HDI is incorporated only in Delaware, with its principal office located in Texas, both at the time of the filing of the action and at the time of the removal. However, Plaintiff fraudulently joined HDI as a defendant to defeat diversity

jurisdiction, as there is absolutely no possibility that Plaintiff will be able to establish a cause of action against HDI in state court.

3. Plaintiff alleges in her Original Petition that the Store was in the exclusive management, control, and possession of HDI. (Plaintiff's Original Petition ¶ IV) HDI, however, has never managed, controlled, or possessed the Store.

4. The Declaration of Steve Taplits,¹ which is attached hereto as Exhibit "D," establishes that HDI does not now own or operate, nor has it ever owned or operated, the Store located at 3261 North George Bush Freeway, Garland, Texas. (Declaration, ¶ 4) HDI has never owned or had any real property interest in the land upon which the store is located. (Declaration, ¶ 4) Further, HDI plays no role and has never played any role in the management or decision making process regarding operations of the Store. (Declaration, ¶ 6) The Store is and has always been operated by Home Depot. (Declaration, ¶ 4)

5. Thus, as a matter of law, HDI cannot be charged with knowledge of any condition on the premises, cannot be required to exercise reasonable care to reduce or eliminate any alleged risk, and cannot be held liable for the alleged failure to use such care as being the proximate cause of Plaintiff's purported injuries. Plaintiff, therefore, cannot possibly establish any cause of action against HDI.

6. The amount in controversy in the State Court Action is in excess of \$75,000.00, exclusive of interests and costs. Plaintiff's petition clearly indicates an amount in controversy in excess of the \$75,000 jurisdictional limit. This Court has original jurisdiction over this action under 28 U.S.C. § 1332. Venue is proper in this Court under 28 U.S.C. §1391, as this is the district and division embracing the place where the state court action is pending. This action is one which may

¹ For purposes of fraudulent joinder, courts utilize a summary judgment type practice and pierce the pleadings. *Ross v. Citifinancial, Inc.*, 344 F.3d 458, 462-63 (5th Cir. 2003).

be removed by Home Depot pursuant to *28 U.S.C. § 1441* since the Court has original jurisdiction over Plaintiff's claims.

7. **State Court Documents Attached.** This suit was filed on or about June 8, 2004, and citation was served upon Home Depot on June 10, 2004. Home Depot, therefore, received the first plea or pleading in this case on June 10, 2004. HDI was also served with citation on June 10, 2004. Removal, therefore, is timely under *U.S.C. § 1446(b)*. Attached hereto are the documents from the state court action, said documents constituting the only process, pleading, or orders received by Home Depot in this action.

8. **Consent to Removal.** Because removal is premised on fraudulent joinder, HDI need not consent to removal.

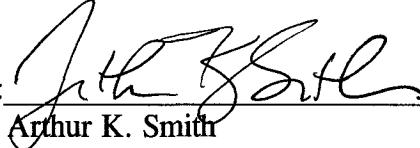
9. **Relief Requested.** Home Depot respectfully requests that the United States District Court for the Northern District of Texas, Dallas Division, accept this notice of removal and that it assume jurisdiction of this cause and issue all such further orders and processes as may be necessary to bring before it all parties necessary for the trial hereof.

10. **Jury Demand** – Home Depot hereby requests trial by jury on all issues and claims in this cause.

Respectfully submitted,

LAW OFFICES OF ARTHUR K. SMITH,
A Professional Corporation

By:


Arthur K. Smith
Attorney-in-Charge
Texas State Bar No. 18534100

Kimberly R. Lafferty
Of Counsel
Texas State Bar No. 00796915

507 Prestige Circle
Allen, Texas 75002
Telephone: (469) 519-2500
Facsimile: (469) 519-2555

ATTORNEYS FOR DEFENDANT
HOME DEPOT U.S.A., INC.

CERTIFICATE OF SERVICE

On the 12th day of July, 2004, a true and correct copy of the above and foregoing pleading was served upon counsel for Plaintiff via certified mail, return receipt requested, in accordance with Rule 5 of the Federal Rules of Civil Procedure.


Arthur K. Smith

158904.297\Notice.Removal